

RICH AND HENDERSON, P.C.
ATTORNEYS AT LAW
2661 Riva Road
Bldg. 300
Annapolis, Maryland 21401

TEL: (410) 417-7778
LOCAL: 410-267-5900

FAX: (410) 267-5901
E-MAIL: thenderson@richlaw.com
jhershey@richlaw.com

September 14, 2021

VIA FOIAonline,
RETURN RECEIPT REQUESTED

Regional Freedom of Information Officer
U.S. EPA, Region 3
1650 Arch Street (3RC70)
Philadelphia, PA 19103

Re: FOIA Request for All Communications and Documents Related to Removing, Addressing, or Deciding Not to Remove or Address, “Asphalt,” “Asphalt Millings,” “Asphalt Piles,” and/or Any Other Material from a “Ditch,” “Channel,” or Any Other Opening in the Ground, Located On, At, Near, Adjacent To, or Within One (1) mile of the DC Department of Transportation (DC DOT) facility located at 5 DC Village Lane, South West, Washington D.C. 20032, which the DC DOT leases from the District of Columbia, and the Monumental Concrete facility located at 3 DC Village Lane, South West, Washington D.C. 20032, which Monumental Concrete leases from the District of Columbia.

Dear FOIA Officer:

I request that a copy of the following be provided to me:

1. All communications and documents created within the last three (3) years related to removing, addressing, or deciding not to remove or address, “asphalt,” “asphalt millings,” “asphalt piles,” and/or any other material from a “ditch,” “channel,” or any other opening in the ground, located on, at, near, adjacent to, or within one (1) mile of the DC Department of Transportation (DC DOT) facility located on 5 DC Village Lane, South West, Washington D.C. 20032, which the DC DOT leases from the District of Columbia, and the Monumental Concrete facility located at 3 DC Village Lane, South West, Washington D.C. 20032, which Monumental Concrete leases from the District of Columbia.

2. To assist the EPA in its search for responsive documents, please find a summary of responsive documents that Rich and Henderson, P.C. has created and sent to numerous EPA Region III employees below:

On September 9, 2019, Rich and Henderson sent a letter to Cosmo Servidio, Regional Administrator for U.S. EPA Region III, and Ingrid H. Hopkins, NPDES Section (3ED32) for U.S. EPA Region III, and copied, among others from other state agencies, Pam Lazos, Esq. That letter was a response to DOEE Compliance Evaluation Inspection Reports issued June 4, 2019 and July 8, 2019 related to “Monumental Concrete DC Village Lane, SW, Washington, D.C.” In that letter, Rich and Henderson referred to “asphalt millings” and “asphalt piles placed downgradient to the Monumental facility,” and the letter had attached to it an engineering report referred to as the “Soltesz Report” that referenced “asphalt millings.”

On April 30, 2020, Michelle Price-Fay, Clean Water Branch, Water Division for U.S. EPA Region III, sent Monumental Concrete and Rich and Henderson a letter that referenced the September 9, 2019 letter. Chris Day, Esq., Office of Regional Counsel for EPA Region III, was also copied on the April 30, 2020 letter. While the letter did not directly reference “asphalt millings” or “asphalt piles,” it directly referenced the September 9, 2019 letter.

On May 14, 2020, Rich and Henderson sent a response to the April 30, 2020 letter to Cosmo Servidio, Regional Administrator for U.S. EPA Region III, Ingrid H. Hopkins, NPDES Section (3ED32) for U.S. EPA Region III, and Michelle Price-Fay, Clean Water Branch, Water Division for U.S. EPA Region III. Andrew Wheeler, EPA Administrator, and Pam Lazos, Esq., EPA, were also copied on the May 14, 2020 letter. In the May 14, 2020 letter, Rich and Henderson referred to “asphalt millings and a road crossing placed in the watershed,” and “fill material (asphalt millings) dumped into the channel downstream of the Leasehold.”

On March 18, 2021, Rich and Henderson sent the Maryland Department of the Environment (MDE) an email that referenced “materials” in a “ditch” on Maryland property. That letter also referenced a summer of 2020 virtual meeting that included Rich and Henderson and “EPA and DC representatives,” in which “DC made assurances that it would remove the materials.” Cecil Rodriques of the EPA and Chris Day of the EPA were copied on this email.

On June 11, 2021, James Phillips-Farley, Assistant Attorney General, sent Rich and Henderson a letter in which he stated that the Maryland Department of the Environment, Water and Science Administration (the “Department”), “understands that the U.S. Environmental Protection Agency, Region 3 (“EPA”) is exercising oversight in this matter.” He did not explain how it was that the Department came to its understanding.

3. Our goal is to gain an understanding of what the EPA is doing about the asphalt referenced in our numerous letters sent to various EPA Region III employees over the last three (3) years.

In accordance with the terms of the Freedom of Information Act, I request the fullest possible disclosure of information, including records on paper, in a computer database, on audio or video tape or in any other form. If any portion of the requested records are deemed to be exempt from disclosure, please furnish me any reasonably segregated segments after the exempted portions have been redacted. Please also provide me with a list which describes each document withheld and states the legal authority for nondisclosure pursuant to 5 U.S.C. 552(b) the Freedom of Information Act.

I request that you provide access to and/or copies of all records responsive to this request, consistent with the requirements of the Freedom of Information Act. Please contact me to discuss what records are available, what records are unavailable (if any), and to schedule time for access to the available records.

I will be willing to work with the EPA staff to narrow the focus of this request to keep the search efforts on documents that are responsive to this request.

Thank you in advance for your assistance.

Very truly yours,

Jeffrey F. Hershey, Esq.

&

Timothy R. Henderson, Esq.